

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:09-CR-57-BR
No. 5:12-CV-231-BR

DYNELL LOVELL YOUNG,)
 Petitioner,)
)
 v.)
)
UNITED STATES OF AMERICA,)
 Respondent.)

ORDER

This matter is before the court on a motion pursuant to 28 U.S.C. § 2255. Petitioner asserts one claim. He contends that he is not guilty of having been a felon in possession of a firearm under 18 U.S.C. § 922(g), in light of United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). (Pet., DE # 67, at 5.) He requests that his conviction and sentence be vacated (Id. at 14.)

Initially, the government filed a motion to dismiss the § 2255 motion. (DE # 70.) However, recently, the government filed a “supplemental motion” in which it states that it is now waiving its reliance on a statute of limitations defense. (DE # 73, at 1-2.) It further states that “the defendant has a valid claim that, in light of Simmons, he was erroneously convicted of being a felon-in-possession of a firearm” and requests that the court “reach the merits of Defendant’s claim.” (Id. at 2.)

Accordingly, the § 2255 motion is ALLOWED, and the government’s motions are DENIED. The judgment entered 8 February 2010 is hereby VACATED. Petitioner is

ORDERED to be released from federal custody, subject to pending detainers, if any.

This 15 August 2012.

A handwritten signature in green ink, reading "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt

Senior U.S. District Judge